IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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Nos. 73-3625, 73-3631
Summary Calendar.

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JERRY D. BRANTLEY, ET AL.,
Plaintiffs-Appellants,

v.

UNION BANK & TRUST COMPANY, ET AL.,
Defendants-Appellees.

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GRANT BAKER, CLINTON GRADY AND
ESSIE LEE FELTON, ETC.,
Plaintiffs-Appellants,

v.

R. FRANK KEEBLE, INDIVIDUALLY, AND
TOWN FINANCE CORPORATION,
Defendants-Appellees.

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Appeal from the United States District Court
for the Middle District of Alabama

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August 5, 1974.

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Before BROWN, Chief Judge, and THORNBERRY and AINSWORTH, Circuit Judges.

PER CURIAM:

The appellants in this case seek to challenge the constitutionality of §§9-503, 9-504, Title 7A of the Alabama Code (§§9-503, 9-504 of the Uniform Commercial Code) on due process grounds.1/ These statutes permit limited peaceful self-help repossession without prior notice or hearing by a private party under authority of a private agreement.

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1/ Sections 9-503 and 9-504 read in pertinent part:

> §9-503. *Secured party's right to take possession after default.* - Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action.
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> §9-504. *Secured party's right to dispose of collateral after default; effect of disposition.* - (1) A secured party after default may sell, lease or otherwise dispose of any and all of the collateral in its then condition or following any commercially reasonable preparation or processing.

Our decision in this case is squarely controlled by our recent decision in James v. Pinnix, 495 F.2d 206, p.207, n.5a [1974] in which we found such statutes to be free from Federal due process scrutiny for a lack of requisite state action. The judgments of the district court dismissing the appellants' complaints were correct.

Affirmed.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 73-1866.

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Jessie JAMES, suing in his own behalf and on behalf of all others similarly situated,
Plaintiff-Appellee,

v.

James PINNIX, d/b/a Pinnix Used Cars, individually and as representative of all others similarly situated,
Defendant-Appellant.

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Appeal from the United States District Court for the Southern District of Mississippi, at Jackson

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June 10, 1974.

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Before BROWN, Chief Judge, and GODBOLD and CLARK, Circuit Judges.

GODBOLD, Circuit Judge:

Jessie James, the appellee, bought a used Ford sedan from the appellant, James Pinnix,

for $495. He paid $200 down[1] and signed a contract in which he agreed to pay off the balance at $15 per week. The contract provided that upon default by appellee the appellant could take possession of the car and sell it with or without notice. Appellee eventually stopped making payments,[2] and at the end of about a half-year the appellant repossessed the car via "self-help," towing it away from in front of appellee's house[3] without

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1/ $150 in cash and $50 in the form of a traded-in 1962 Chevrolet.

2/ Appellee claimed he had experienced difficulties with the car and that appellant, upon being informed of them, had told him to make no more payments. Appellant denied having been told about any difficulties. Because of the view the District Court took of the legal issues, this factual dispute and several other factual matters were not resolved below.

3/ Appellant in an affidavit stated that when he located the car in front of appellee's house, it was missing two wheels and its battery.

first initiating suit or otherwise invoking official processes, and without affording appellee preseizure notice[4/] or opportunity to be heard. Appellee then brought suit, alleging a 42 U.S.C. §1983 cause of action and 28 U.S.C. §1343(3) jurisdiction. The District Court permitted the suit to go forward as a class action,[5/] ordered the car returned to

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4/ Appellant's affidavit stated that he knocked on appellee's door just before effecting the repossession, but that no one answered although noise and music were coming from inside the house.

5/ Appellee's class was composed of all residents of the State of Mississippi whose property may in the future be seized by a secured creditor under a security agreement, without use of judicial process and without the consent of the owner of the property, without prior notice and without affording the opportunity for a judicial pre-seizure hearing to determine possessory rights to the property. The appellant's class was composed of all creditors who hold security interests in personal property situated in the State of Mississippi and owned by individuals residing in the State of Mississippi.

appellee, and enjoined appellant from taking the car again without affording appellee prior notice and an opportunity for preseizure hearing, absent a knowing and intelligent waiver by appellee of his possessory rights. Also, the court declared Mississippi Code 1972 Ann. §75-9-503[5a/] (§9-503 of the Uniform Commercial Code) void and unenforceable insofar as it authorizes summary seizure. Finally, the court enjoined appellant and the members of his class from further summary seizures.

On this appeal appellant urges that since repossession of collateral by self-help does not involve state action, appellee has failed

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5a/ Section 75-9-503 reads in relevant part:

> Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action.

to state a claim under 42 U.S.C. §1983. Like the two circuit courts that have already considered the matter,[6/] we hold that there was no state action and therefore reverse.

Appellee has no federal right to redress for appellant's interference with his property interests unless that interference involved state action. To support the existence of state action appellee urges the applicability of the leading case of Hall v. Garson, 430 F.2d 430 (CA5, 1970), in which this circuit found state action in the behavior of a Texas landlady who entered a tenant's apartment without giving notice or resorting to official processes and seized goods to satisfy the tenant's past due rent liability. In *Hall* we held that

> the action taken, the entry into another's home and the seizure of

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6/ Adams v. Southern California First National Bank, 492 F.2d 324 (CA9, 1973); Bichel Optical Laboratories v. Marquette National Bank, 487 F.2d 906 (CA8, 1974).

> another's property, was an act that possesses many, if not all, of the characteristics of an act of the State. The execution of a lien, whether a traditional security interest or a quasi writ of attachment or judgment lien has in Texas traditionally been the function of the Sheriff or constable. Thus [the challenged lien statute under whose aegis the landlady had acted] vests in the landlord and his agents authority that is normally exercised by the state and historically has been a state function.

430 F.2d at 439 (footnote omitted). The *Hall* state function concept does not carry over to the present case with sufficient force to compel a finding of state action. In *Hall* the landlady seized goods to satisfy a debt arising out of an agreement having nothing to do with the goods. Such a taking closely resembles a

seizure in satisfaction of a judgment - a function traditionally performed by a sheriff or other state agent. In the present case, by contrast, the appellant-creditor possessed and claimed no roving commission to extract appellee's goods to satisfy a separate debt. Rather, he had a specific purchase money security interest in a particular item, and he seized only that item. His action, moreover, was by long Mississippi tradition the sort of action performed by private persons, not state officials. *See* Commercial Credit Co. v. Spence, 185 Miss. 293, 184 So. 439 (1938). Finally, seizure by entry into a dwelling, in *Hall* a major decisional factor because it was deemed an indicium of state-like behavior, was absent from the instant case.

Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 92 S.Ct. 1965, 32 L.Ed.2d 627 (1972), does not compel a holding of state action. There the Supreme Court rejected the argument that the

Pennsylvania Liquor Control Board's pervasive regulation of a liquor-licensed private club amounted to such significant state involvement as to make the club's racially discriminatory guest policy state action.7/ The Court also held, however, that application of a liquor board regulation requiring all clubs to adhere to their own constitutions and by-laws would result in invoking the sanctions of the state to enforce discriminatory rules in those instances where the private provisions required racial discrimination, and that therefore the regulation was enjoinable.

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7/ Based on this facet of *Moose Lodge*, we reject appellee's argument that the pervasive state regulation of credit transactions - as shown by Miss. Code 1972 Ann. §§75-9-502 to 75-9-507, 63-19-31 (regulating the details of installment sales contracts), etc. - makes self-help repossession state action. See *Adams*, *supra*, 492 F.2d at 334.

Appellee suggests that §9-503 overtly encourages private interference by secured creditors with property interests in a manner analogous to the operation of the offending liquor board regulation. The analogy has some validity. One can erect an argument that §9-503 backs up creditors in enforcing contracts providing for procedureless interferences with property interests just as the regulation in *Moose Lodge* backed up and gave effect to private clubs' racially discriminatory by-laws. We cannot avoid the force of the analogy by labelling §9-503 "neutral" or by stating that it does not "encourage" creditors to interfere with debtors' property.[8/] Nevertheless, *Moose Lodge* is still distinguishable, because it involved racial discrimination, behavior that since Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686

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8/ See Kirksey v. Thelig, 351 F.Supp. 727, 731 & nn. 7-8 (D.Colo. 1972).

98 L.Ed. 873 (1954), courts have come to look upon as very nearly *malum in se*. The outer boundaries of "imputed" state action have been charted primarily in race discrimination cases. We are unwilling to push out the frontiers still farther in a case devoid of racial overtones.9/

The same consideration compels us to reject appellee's argument based on Reitman v. Mulkey, 387 U.S. 369, 87 S.Ct. 1627, 18 L.Ed.2d 830 (1966). There again racial discrimination was involved. Moreover, the indicia of state involvement were much stronger, because, as the opinion made clear, the purpose of the challenged state constitutional amendment was to authorize private discrimination in the transfer of real property where before it had been barred by statute.

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9/ See Oller v. Bank of America, 342 F.Supp. 21, 23 (N.D.Cal. 1972).

A number of courts in §9-503 cases have rejected debtors' *Reitman* contentions by holding that the UCC did not "create the right" to repossess via self-help, that the right flows exclusively from contract and was recognized at state common law. We prefer not to follow that line of analysis-by-characterization. See Judge Byrne's dissent in *Adams*, 492 F.2d at 338. Were we to follow it, the answer it would yield when applied to Mississippi law would be uncertain. There is a reasonable, albeit conceptual, argument that the Mississippi legislature intended Article 9 of the UCC to supplant preexisting law and that therefore the power to repossess flows from §9-503 today even though it was recognized in pre-UCC Mississippi common law. Even setting that argument to one side, the fact is that Mississippi cases did not sanction self-help repossession except when provided for in the parties' contract, whereas §9-503 allows it even when the contract is

silent on the point.[10] Thus the creditor's arguments that §9-503 merely carried forward the former Mississippi practice and that the contract is the sole source of summary repossession power, lose some force.[11]

No bright lines can be drawn in this area, and we draw none. Some state involvement in the *Reitman-Moose Lodge* sense may be present here, but it is simply not enough, given the nonracial nature of the case, to constitute state action. *See* Kirksey v. Thelig, *supra*, at 732-733.

We reject appellee's contention that Mississippi creditors are joint participants with the state under United States v. Price,

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[10] But not when the contract expressly forbids it. Section 9-503 reads, "Unless otherwise agreed," self-help is permitted.

[11] The class of debtors defined in the order of the District Court conceivably could include persons whose goods were summarily seized even though the contracts they signed contained no clause authorizing such action.

383 U.S. 787, 86 S.Ct. 1152, 16 L.Ed.2d 267 (1966). Nor is Peterson v. City of Greenville, 373 U.S. 244, 83 S.Ct. 1119, 10 L.Ed.2d 323 (1963), apposite. There a store manager's action in asking ten black youngsters to leave the "whites-only" area of a restaurant and in calling upon the police to speed their departure became state action, because the state had "commanded a particular result," had "become involved" in it, and had "removed [the] decision [whether or not to maintain segregated facilities] from the sphere of private choice." 373 U.S. at 248, 83 S.Ct. at 1121, 10 L.Ed.2d at 326. *Peterson* obviously involved racial discrimination and turned upon the existence of a city ordinance requiring segregation in restaurants. Whatever else it may do, §9-503 assuredly does not *require* creditors to contract for or to exercise the power of summary repossession.

Reversed.

IN THE

UNITED STATES DISTRICT COURT FOR

THE MIDDLE DISTRICT OF ALABAMA

EASTERN DIVISION

| | | |
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| GRANT BAKER AND CLINTON GRADY, Individually and on behalf of all others the same or similarly situated, | ) | |
| Plaintiffs, | ) | |
| VS. | ) | CIVIL ACTION NO. 998-E |
| R. FRANK KEEBLE, Individually, and TOWN FINANCE CORPORATION, a Corporation, | ) | |
| Defendants. | ) | |

O R D E R

The cause is submitted for final judgment on the complaint, answer, exhibits, stipulations and briefs in the record.

Plaintiff, Clinton Grady, financed the purchase of an automobile with the Defendant, Town Finance Corporation. Mr. Grady signed a

form contract which contained a security agreement and Plaintiff, Essie Lee Grady (Felton) was a co-maker, listing her furniture as additional security. The evidence shows that the car was actually used, purchased and partially paid for by Plaintiff, Grant Baker, and that Grady and Felton merely assisted Baker in obtaining the necessary financing. The Defendant, R. Frank Keeble, allegedly was the agent of Town Finance Corporation. The Plaintiffs fell behind in their payments, and the car was repossessed by Town Finance Corporation, said repossession being authorized by the security agreement.

The claims for relief are based on several theories of law: (1) That Code of Alabama, Title 7A, §§9-503 and 9-504 are unconstitutional on their face; (2) that the security agreement is unconstitutional; (3) fraud in the

procurement of the agreement; and (4) that the agreement is usurious.1/

Although the complaint contains several causes of action, it appears that the parties have concentrated most, if not all, of their time on the constitutional issue surrounding §9-503. The briefs and evidence are aimed toward this issue, with apparently little regard for the other issues. Therefore, the Court at this time addresses itself only to the constitutional issue of §§9-503 and 9-504.

The Plaintiffs have brought a §1983 class action seeking to enjoin the enforcement of Alabama's "self-help" repossession statute, Code of Alabama, Title 7A, §§9-503 and 9-504.

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1/ The latter three theories relate to causes cognizable under the state law. Federal jurisdiction, if any, must rise or fall on the constitutional issue. Jurisdictional amount for diversity jurisdiction is obviously lacking. Jurisdiction is alleged only on the basis of 28 USC §§1343(3), (4) and 1332.

This suit can be broken into two distinct issues: (1) Does private repossession under the auspices of §9-503 constitute action under "color of state law" giving rise to §1983 federal jurisdiction; and (2) if "state action" is present, does the remedy endorsed by §9-503 violate due process? A negative answer to the first question obviates the necessity of answering the second.

Upon consideration of this cause, this Court is of the opinion that the arguments against state action are compelling and that this case should be dismissed for lack of jurisdiction. Of the existing district court decisions involving attacks on the constitutionality of §9-503, four reached the conclusion that Plaintiffs failed to establish §1983 federal jurisdiction because the repossessing creditors were not acting under "color of state law". *Kirksey v. Theilig*, 351 F.Supp. 727 (DC Colo. 1972); *Greene v. The First National Exchange Bank of Virginia*, 348 F.Supp. 672 (WD VA. 1972); *Oller*

*v. Bank of America*, 342 F.Supp. 21 (ND Cal. 1972); *McCormick v. First National Bank of Miami*, 322 F.Supp. 604 (SD Fla. 1971). *Adams v. Egley*, 338 F.Supp. 614 (SD Cal. 1972), and *Michel v. Rex-Noreco*, ___ F.Supp. ___, Civil Action 6729 (DC Vermont 1972), are the lone exceptions. Apparently, the question was not raised in *James v. Pennix*, [sic] (S.D.Miss. 1973) Ci. No. 72 J-250-N, wherein the court held a Mississippi statute unconstitutional under the particular circumstances.

As a general rule, action by a non-state official fulfills the requirement of "state action" in only three circumstances: (1) Where a state official is acting in concert with a private individual[2/]; (2) where the state compels such action; and (3) where the state law

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2/ This is the distinguishing feature between the present case and *Adickes v. S.H. Kress Co.*, 398 U.S. 144, upon which Plaintiffs rely.

creates a power which has no common law or contractual origin[3/]. None of the above three exceptions includes "self-help" repossession. See *Oller v. Bank of America*, supra.

Plaintiffs urge this Court to extend the *Reitman* theory of state action to repossessions under §9-503. However, several factors militate against such an extension of the *Reitman* theory. The *Reitman* case dealt with racial discrimination and an attempt to circumvent pre-existing law. This is not the situation in the case sub judice. The statute under attack does not invoke racial discrimination nor does the statute change the pre-existing law. Self-help repossession has long been recognized as a valid remedy, and §9-503 merely codified pre-existing law. The Plaintiffs' theory of state action would subject most private conduct to

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3/ This is the distinguishing feature between the present case and the cases of Hall v. Carson, 430 F.2d 430 (5 Cir. 1970), *Reitman v. Mulkey*, 387 U.S. 369 (1967).

Fourteenth Amendment standards. See *Kirksey v. Theilig*, supra.

Furthermore, the trend of recent Supreme Court decisions has been to restrict the "state action" concept rather than to expand said concept. See *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163.

In summary, self-help repossession has long been recognized as a valid private remedy and §9-503 is not a sudden intervention. Under the weight of authority, as well as the trend of recent Supreme Court decisions, this Court is of the opinion that no "state action" within the meaning of §1983 is involved in a §9-503 repossession to invoke §1983 jurisdiction. Accordingly, all aspects of this proceeding should be, and the same are hereby ORDERED, dismissed for lack of federal jurisdiction. It is further

ORDERED that the costs of this proceeding be, and the same are hereby, taxed against the Plaintiffs for which execution may issue.

DONE this 9th day of August, 1973.

s/ R. E. Varner
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

| | | |
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| JERRY D. BRANTLEY, ET AL., | ) | |
| Plaintiffs, | ) | |
| VS. | ) | CIVIL ACTION NO. 4007-N |
| UNION BANK & TRUST COMPANY, A Corporation; ET AL., | ) | |
| Defendants | ) | |

O R D E R

It is the ORDER, JUDGMENT and DECREE of this Court that this cause be, and the same is hereby, dismissed because this Court lacks jurisdiction. See *Baker v. Keeble*, Civil Action No. 998-E (M.D. Ala. 1973).

DONE this 10th day of August, 1973.

s/ R. E. Varner
UNITED STATES DISTRICT JUDGE

U. S. CONSTITUTION, AMENDMENT XIV.

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

REVISED STATUTES SECTION 1979.

UNITED STATES CODE.

Title 42.

§1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress.

ALABAMA COMMERCIAL CODE.

§1-105. Territorial application of the act; parties' power to choose applicable law. -

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this title applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 2-402.

Applicability of the article on bank deposits and collections. Section 4-102.

Bulk transfers subject to the article on bulk transfers. Section 6-102.

Applicability of the article on investment securities. Section 8-106.

Policy and scope of the article on secured transactions. Sections 9-102 and 9-103.

§9-102. Policy and scope of article. -

(1) Except as otherwise provided in Section 9-103 on multiple state transactions and in section 9-104 on excluded transactions, this article applies so far as concerns any personal property and fixtures within the jurisdiction of this state

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general

intangibles, chattel paper, accounts or contract rights; and also

(b) to any sale of accounts, contract rights or chattel paper.

(2) This article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This article does not apply to statutory liens except as provided in section 9-310.

(3) The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

§9-302. When filing is required to perfect security interest; security interests to which

filing provisions of this article do not apply.-

(1) A financing statement must be filed to perfect all security interests except the following:

(d) a purchase money security interest in consumer goods; but filing is required for a fixture under section 9-313 or for a motor vehicle required to be licensed;

§9-403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.-

(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article.

(2) A filed financing statement which states a maturity date of the obligation secured of five years or less is effective until such maturity date and thereafter for a period of sixty days. Any other filed financing

statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such sixty day period after a stated maturity date or on the expiration of such five year period, as the case may be, unless a continuation statement is filed prior to the lapse. Upon such lapse the security which states that the obligation secured is payable on demand is effective for five years from the date of filing.

(3) A continuation statement may be filed by the secured party (i) within six months before and sixty days after a stated maturity date of five years or less, and (ii) otherwise within six months prior to the expiration of the five year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. Upon

timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it.

(4) A filing officer shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the

statement. In addition to the indexing required in the preceding sentence, statements covering crops growing or to be grown, or goods which are or are to become fixtures, or timber shall be indexed in the real estate mortgage records by the filing officer according to the name of the record owner given in the statement.

(5) The uniform fee for filing, indexing and furnishing filing data for an original or a continuation statement shall be $2.00.

§9-503. Secured party's right to take possession after default.-

Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the

collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under section 9-504.

§9-504. Secured party's right to dispose of collateral after default; effect of disposition.-

(1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the article on sales (article 2). The proceeds of disposition shall be applied in the order following to

(a) the reasonable expenses of retaking, holding, preparing for sale, selling and the

like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any

deficiency. But if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, and except in the case of

consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or who is known by the secured party to have a security interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this Part or of any judicial proceedings

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this article.

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

(Eastern Division)

| | | |
|---|---|---|
| GRANT BAKER And CLINTON GRADY, Individually and on behalf of all others the same or similarly situated, | ) | |
| Plaintiffs, | ) | |
| VS. | ) | CIVIL ACTION NO. 998-E |
| R. FRANK KEEBLE, Individually And TOWN FINANCE CORPORATION, a Corporation, | ) | |
| Defendants. | ) | |

C O M P L A I N T

V

Allegations of Fact

a. On or about to-wit: October 13, 1972, Plaintiffs went to West Point, Georgia to borrow money from Defendant, Town Finance Corporation in order to purchase one 1970 Chevelle Automobile, Serial # 136370A172157.

b. Prior to this date, Plaintiffs had negotiated with one David E. Crawford to purchase said automobile for a price of Two Thousand One Hundred ($2,100.00) Dollars.

c. While attempting to obtain the necessary $2,100.00 from Town Finance Corporation, Defendant, R. Frank Keeble became involved in the transaction. He was represented to be an agent, servant or employee of Defendant, Town Finance Corporation.

d. Plaintiff Clinton Grady signed various papers in order to obtain the loan. Upon request of Defendant Town Finance Corporation, the aunt of Defendant Grant Baker co-signed various papers with Plaintiff Clinton Grady. Her name is Essie Lee Felton. However, at the instruction of Defendant Town Finance Corporation, she signed as "Essie Lee Grady".

e. After signing all the papers in order to obtain the $2,100.00 Plaintiffs found themselves owing a total of $2,832.00. See Federal

Disclosure Statement which is attached hereto and made a part hereof as Plaintiffs' Exhibit One. [Omitted.] A copy of the Security Agreement is attached hereto and made a part hereof as Plaintiffs' Exhibit Two. [Omitted.]

f. A check in the amount of $2,100.00 was then made by Defendant Town Finance Corporation. The check was made payable to Defendant, R. Frank Keeble and Plaintiff Clinton Grady.

g. Both Defendant Keeble and Plaintiff Grady endorsed the check. Plaintiff Grady endorsed upon the insistence and instructions of Keeble.

h. Keeble then took the check and cashed it. He gave Plaintiff Grady $1,640.00 and kept the remaining $460.00. He informed both Plaintiffs that if they wanted to get the $460.00 in order to have enough to purchase the 1970 Chevelle automobile they would have to give Keeble Plaintiff Baker's 1966 Nova. Both Plaintiffs reluctantly agreed and said car was given to Keeble.

i. Thereupon, Plaintiffs Baker and Grady and Defendant Keeble drove to Phenix City, Russell County, Alabama, to the place where the 1970 Chevelle automobile was located. Keeble counted out the money to David E. Crawford and Keeble took possession of the car.

j. Upon information and belief, Plaintiffs allege that Defendant Keeble took title to said 1970 Chevelle automobile.

k. Keeble then turned the car over to Plaintiffs. However, upon information and belief, Plaintiff alleges that Keeble retained title to said automobile.

l. Plaintiff Baker operated said automobile and made the payments on same. However, he became sick and became behind one payment. He had made said payments to Defendant Keeble.

m. On or about to-wit: February 19, 1973, Frederick D. Jones, an agent, servant or employee of Defendant, Town Finance Corporation, did come to the residence of Plaintiff in Macon County,

Alabama and took possession and repossessed the said 1970 Chevelle Automobile. He did so under the pretext that Plaintiffs had not obtained the proper insurance for the said 1970 Chevelle Automobile.

n. Plaintiffs' attorney was informed that Defendant intends to sell said 1970 Chevelle Automobile.

o. Plaintiffs are informed, and believe and upon such information and belief allege that the repossession by Defendant, Town Finance Corporation and Frederick D. Jones was pursuant to Title 7A, Section 9-503 of the Code of Alabama. Said Plaintiffs are informed and believe and upon such information and belief allege that said Defendant intends to sell said automobile pursuant to Title 7A, Section 9-504 of the Alabama Code.

p. However, if Plaintiffs are mistaken concerning what law said Defendant Town Finance Corporation intends to sell said 1970 Chevelle

automobile and the law is in fact the law of the State of Georgia, then Plaintiffs allege that the corresponding provisions of the Uniform Commercial Code Section 9-504, which Georgia has adopted, is the statute under which said Defendant intends to sell said automobile.

q. Title 7A, Sections 9-503 and 9-504 of the Code of Alabama read as follows: [Omitted.]

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IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

(NORTHERN DIVISION)

| | | |
|---|---|---|
| JERRY D. BRANTLEY AND JEAN A. BRANTLEY, PLAINTIFFS, | ) | |
| VS. | ) | CIVIL ACTION NO. [4007-N] |
| UNION BANK & TRUST COMPANY, a Corporation; DOUG GOODWIN, Individually; and LANGFORD INVESTIGATORS, INC., a Corporation, DEFENDANTS. | ) | |

COMPLAINT

V. FACTS

a. On to-wit: April 11, 1972, Plaintiffs, Jerry D. Brantley and Jean A. Brantley, who are husband and wife, went to Mary Chevrolet Company in Troy, Alabama, and purchased a 1970 Pontiac automobile. See the Bill of Sale which is attached hereto and made a part hereof as

Plaintiffs' Exhibit #One. [Omitted.] Plaintiffs were never given the original copy of the Bill of Sale.

b. The sales price, including taxes and finance and other charges was $4,131.57. Plaintiffs were given a used car allowance on a 1968 Oldsmobile of $723.45 with a resulting balance owing Defendant, Union Bank & Trust Company, of $4,131.57 payable in 36 monthly installments of $94.67. The 1968 Oldsmobile given in trade was left with Mary Chevrolet Company when the transaction was completed.

c. In order to obtain a loan to finance the purchase of the automobile, Plaintiffs signed a retail installment contract which was a promise to pay to Defendant, Union Bank & Trust Company, the full sum of $4,131.57. See the retail installment contract which is attached hereto and made a part hereof as Plaintiffs' Exhibit #Two. [Omitted.]

d. The entire transaction, including

signing the retail installment contract, occured on the premises of Mary Chevrolet Company in Troy. At the conclusion of the transaction, Plaintiffs, Jerry D. Brantley and Jean A. Brantley, were given possession of the 1970 Pontiac automobile.

e. Upon information and belief, Plaintiffs allege that Mary Chevrolet Company then transferred the retail installment contract to defendant, Union Bank & Trust Company.

f. Plaintiffs began operating said automobile on to-wit: April 11, 1972. Plaintiff, Jerry D. Brantley, primarily used the automobile to engage in gainfull employment in the Atlanta, Georgia, area. The automobile was also used by Plaintiff, Jean A. Brantley, to engage in gainfull employment in the Troy area.

g. The payments to defendant, Union Bank & Trust Company, were to begin on May 26, 1972, and on the 26th day of each month thereafter. Plaintiffs made the following payments in the amount of $94.67 each:

| Date Payment Mailed in 1972: | Payment for Month of: |
|---|---|
| May 30 | May |
| June 26 | June |
| August 10 | July |
| October 8 | August |
| November 10 | September |

h. The automobile was repossessed on December 7, 1972, with the payments due for October 26, 1972, and November 26, 1972.

i. Plaintiffs became unable to make the monthly payments on time when Plaintiff, Jerry D. Brantley, became sick for a period of three months during which time he was confined to his bed for a period of six weeks. During and after the period when Plaintiff, Jerry D. Brantley, was sick, Defendant, Union Bank & Trust Company, through its employees contacted Plaintiffs about payments on the automobile. Arrangements for payments were made each time Plaintiffs were contacted and Plaintiffs were able to make the payments as agreed.

j. On to wit: Tuesday, December 5, 1972, a person who stated he worked for Defendant, Union Bank & Trust Company, called Plaintiffs' home and talked to Jean A. Brantley. The purpose of the call was to talk with Plaintiff, Jerry D. Brantley, about a payment. Jean A. Brantley told the caller that Jerry D. Brantley was working in Atlanta and she expected him home on the weekend. She told the caller that she would have Jerry return the call or come to the Bank as soon as he got home. The caller stated that this would be "o k".

k. Two days later on to-wit: Thursday, December 7, 1972, before 6:30 A.M. Defendant, Doug Goodwin, knocked at the front door of Plaintiffs' home. He identified himself as an employee of Langford Investigators and told Mrs. Brantley that he had come to "pick up the car". Mr. Goodwin talked with Mrs. Brantley about one hour during which time he told her that his orders were to pick up the car; that he could get

"legal papers" to obtain the car, but that it was "costing her by the hour" for him to wait for her to consent to pick up the car; that it would cost her about $80.00 more for him to "go through Court" to get the car, that "the only thing I can do is take the car, I have been sent here to take the car".

Mrs. Brantley tried to contact Mr. Brantley in Atlanta, but was unable to do so because he had begun work about 3:00 A.M. as a deliveryman on a milk route. After failing to contact Mr. Brantley, she began to cry and stated, "there's nothing else to do, but give it to you" and Mr. Goodwin stated in response, "that's it, you will have to give it to me". She then gave him the keys and he assisted her in removing personal belongings from the car. Mr. Goodwin then drove the car off.

1. Since losing the automobile, Plaintiff, Jerry D. Brantley has had difficulty in obtaining employment because he had no automobile.

m. Plaintiffs were notified on to-wit: February 28, 1973, by Scott Athey an employee of Defendant, Union Bank & Trust Company, that the automobile had been sold and that Plaintiffs owed the Bank about $700.00. On March 7, 1973, a civil suit was commenced in the Inferior Court of Pike County by Defendant, Union Bank & Trust Company, claiming $700.13 as a balance due on the retail installment contract. Plaintiffs have had to employ Attorney John B. Crawley to represent them in defense of this suit which Plaintiffs claim as damages.

s/ John B. Crawley
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